

**DISTRICT OF COLUMBIA
DOH OFFICE OF ADJUDICATION AND HEARINGS**

DISTRICT OF COLUMBIA
DEPARTMENT OF HEALTH

Petitioner,

v.

HOWARD UNIVERSITY and
ROBERT FLETCHER
Respondents

Case Nos.: I-00-10709
I-00-10710
I-00-10713
I-00-10714
(Consolidated)

FINAL ORDER

I. Introduction

On December 6, 2001, the Government served two Notices of Infraction (Nos. 00-10709 and 10710) upon Respondents Howard University ("Howard") and Robert Fletcher. Notice of Infraction No. 00-10709 alleged that Respondents violated 21 DCMR 534.2, which requires the owner or other person in control of a storm water management facility to maintain the facility in good condition and to perform promptly any necessary repair and restoration of the facility. The Notice of Infraction alleged that the violation occurred on April 5, 2001 at the 600 W Street parking lot at the Howard campus and sought a fine of \$100. Notice of Infraction No. 00-10710 also alleged a violation of § 534.2 occurring on April 5, 2001. It alleged that the violation occurred at Cook Hall on the Howard campus and also sought a fine of \$100.

Respondents did not file an answer to the Notices of Infraction within the required twenty days after service (fifteen days plus five additional days for service by mail pursuant to D.C. Official Code §§ 2-1802.02(e), 2-1802.05). Accordingly, on January 16, 2002, this

administrative court issued separate orders in each case finding Respondents in default and subject to separate statutory penalties of \$100 as required by D.C. Official Code § 2-1801.04(a)(2)(A).

As required by the Civil Infractions Act, D.C. Official Code § 2-1802.02(f), the Government then served second Notices of Infraction upon Respondents on January 29, 2002. Notice of Infraction No. 00-10714 alleged the violation at the parking lot, and Notice of Infraction No. 00-10713 alleged the violation at Cook Hall. Respondents also did not answer those notices within twenty days of service. Accordingly, in March 2002, separate Final Notices of Default were issued, finding Respondents in default on both second Notices of Infraction and subject to separate penalties of \$200 in each matter pursuant to D.C. Official Code §§ 2-1801.04(a)(2)(A) and 2-1801.04(a)(2)(B).¹ The Final Notices of Default also set April 14, 2002 as the date for an *ex parte* proof hearing, and afforded Respondents an opportunity to appear at that hearing to contest liability, fines, penalties or fees. Copies of both the first and second Notices of Infraction were attached to the Final Notice of Default.

On April 14, 2002, the Government, represented by Walter Caldwell, the inspector who issued the Notices of Infraction, appeared for the hearing. Respondent Robert Fletcher, the Maintenance Operations Supervisor for Respondent Howard University, appeared on his own behalf and on behalf of the University. At the hearing, Mr. Fletcher entered a plea of Admit with Explanation to both the parking lot and the Cook Hall charges.

¹ The Final Notice of Default for the parking lot matter was filed on March 22, 2002; the Final Notice of Default for the Cook Hall matter was filed on March 21, 2002. The cases originally were assigned to different Administrative Judges, but now are consolidated before me.

Based upon the testimony at the hearing, my evaluation of the credibility of the witnesses and the entire record in this case, I now make the following findings of fact and conclusions of law.

II. Findings of Fact

Two storm water management systems at Howard are at issue here. Those systems consist of storm drains with various filtration devices intended to eliminate or reduce pollutants before the water flowing into the drain is discharged into the District of Columbia's sewer system, and ultimately into the Potomac River. Respondents' plea of Admit with Explanation establishes that they did not maintain both systems in good condition. The violations occurred in part because Respondents did not have a complete set of records showing the location of all storm water management systems on campus. After issuance of the Notices of Infraction, Mr. Caldwell provided Mr. Fletcher with copies of the Government's records showing the location of on-campus storm water management systems to enable Mr. Fletcher to learn the location of those systems in order to maintain them properly. Mr. Fletcher also arranged for proper maintenance and repair of the two systems at issue in this case. Those repairs activities were completed early in April of this year.

Respondents have accepted responsibility for the violations. Howard University has a history of violations of the storm water management rules, having been found liable on two previous occasions. *DOH v. Howard University*, OAH No. I-00-10669 (Final Order, May 15, 2002); *DOH v. Howard University Hospital*, OAH No. C-00-10351 (Final Order June 6, 2001).

The first Notices of Infraction were served by certified mail upon Respondents, as evidenced by the certificates of service signed by the Government's representative. The first

Notices of Infraction were actually received by Respondents, as evidenced by return receipts. Petitioner's Exhibit ("PX") 103. The second Notices of Infraction also were served by certified mail, as evidenced by the certificates of service signed by the Government's representative. Those mailings have not been returned to the Government by the Postal Service. The Orders of January 16, March 21 and March 22, which included copies of the Notices of Infraction, were mailed to Respondents by the Clerk's Office and have not been returned by the Postal Service. Due to an admitted administrative mix-up at Howard, Mr. Fletcher did not receive the Notices of Infraction, and only received copies of the Orders shortly before the April 14 hearing.

III. Conclusions of Law

Respondents' plea of Admit with Explanation establishes that they committed two violations of 21 DCMR 534.2 on April 5, 2001. Violations of § 534.2 are Class 3 infractions, punishable by a fine of \$100 for a first offense. 16 DCMR 3234.2(o); 16 DCMR 3201.² Respondents have undertaken good faith cooperative efforts with the Government in an effort to locate all storm water management systems on the Howard campus in order to prevent future violations, and they have accepted responsibility for the violations in this case. Accordingly, the fines will be reduced to \$75 for each violation, for a total fine amount of \$150.

The Civil Infractions Act, D.C. Code Official Code §§ 2-1802.02(f) and 2-1802.05, requires the recipient of a Notice of Infraction to demonstrate "good cause" for failing to answer it within twenty days of the date of service by mail. If a party does not make such a showing, the statute requires that a penalty equal to the amount of the proposed fine must be imposed. D.C.

² As noted above, Howard has a history of prior violations of the storm water management rules, including § 534.2. The Government, however, elected not to charge Howard as a repeat offender, and sought only the fine for a first violation.

Official Code §§ 2-1801.04(a)(2)(A) and 2-1802.02(f). If a recipient fails to answer a second Notice of Infraction without good cause, the penalty doubles. D.C. Official Code §§ 2-1801.04(a)(2)(B) and 2-1802.02(f). Respondents do not contend that service of the Notices of Infraction was improper in any way; rather their own administrative problems prevented them from answering the Notices of Infraction within the time prescribed by law. “Administrative difficulties ordinarily do not excuse failures to meet statutory deadlines,” however. *DOH v. Whatsa Bagel of Cleveland Park*, OAH No. I00-70244 at 4 (Final Order, June 28, 2001). Respondents, therefore, have failed to carry their burden of demonstrating good cause for not responding to the Notices of Infraction, and I will impose the \$200 penalty required by law for both the parking lot violation and the Cook Hall violation, for a total statutory penalty amount of \$400.

IV. Order

Based upon the foregoing findings of fact and conclusions of law, it is, this _____ day of _____, 2002:

ORDERED, that Respondents shall pay a total of **FIVE HUNDRED FIFTY DOLLARS (\$550)** in accordance with the attached instructions within twenty (20) calendar days of the mailing date of this Order (15 days plus 5 days service time pursuant to D.C. Official Code §§ 2-1802.04 and 2-1802.05); and it is further

ORDERED, that if Respondents fail to pay the above amount in full within twenty (20) calendar days of the date of mailing of this Order, interest shall accrue on the unpaid amount at the rate of 1½ % per month or portion thereof, starting from the date of this Order, pursuant to D.C. Code Official Code § 2-1802.03 (i)(1); and it is further

ORDERED, that failure to comply with the attached payment instructions and to remit a payment within the time specified will authorize the imposition of additional sanctions, including the suspension of Respondents' licenses or permits pursuant to D.C. Official Code § 2-1802.03(f), the placement of a lien on real and personal property owned by Respondents pursuant to D.C. Official Code § 2-1802.03(i) and the sealing of Respondents' business premises or work sites pursuant to D.C. Official Code § 2-1801.03(b)(7).

/s/ **06/11/02**

John P. Dean
Administrative Judge